APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER
CHOJNACKI, MELLISSA M

ART UNIT	PAPER NUMBER
2164	

DATE MAILED: 11/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)
Office Action Summary	10/080,856	HERZ, WILLIAM S.
	Examiner	Art Unit	
	Mellissa M. Chojnacki	2164	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>*01-September-2005*</u>.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-5,8,11-17,19-24,27,30-35,37-42,44,46-51,53 and 55* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-5, 8, 11-17, 19-24, 27, 30-35, 37-42, 44, 46-51, 53 and 55* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of: .

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____ .

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

SAM RIMELL
PRIMARY EXAMINER

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
    Paper No(s)/Mail Date _____ .

4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: _____ .

DETAILED ACTION

Remarks

1.   In response to communications filed on September 1, 2005, claims 43, 45, 52

and 54 are cancelled, claims 1-2, 8, 11-12, 17, 20-21, 27, 30-31, 35, 38-40, 47-49 and

53 are amended, and no new claims have been added. Therefore, claims 1-5, 8, 11-17,

19-24, 27, 30-35, 37-42, 44, 46-51, 53 and 55 are presently pending in the application.

Claim Rejections - 35 USC § 112

2.   The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly
> claiming the subject matter, which the applicant regards as his invention.

3.   Claims 44 and 53 are rejected under 35 U.S.C. 112, second paragraph, as being

indefinite for failing to particularly point out and distinctly claim the subject matter which

applicant regards as the invention.

Claim 44 recites the limitation "The method of claim 43" in line 1. There is

insufficient antecedent basis for these limitations in the claim. For the purpose of

examination, the examiner is making the assumption that claim 44 is indeed dependent

from claim 42 (not claim 43). Correction is required.

Claim 53 recites the limitation "The method of claim 42" in line 1. There is

insufficient antecedent basis for these limitations in the claim. For the purpose of

examination, the examiner is making the assumption that claim 52 is indeed dependent

from claim 51 (not claim 52). Correction is required.

Claim Rejections - 35 USC § 103

4.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5.   Claims 1-5, 8, 12-17, 19-24, 27, 31-35, 37-42, 44, 46-51, 53 and 55 are rejected

under 35 U.S.C. 103(a) as being unpatentable over Hoffert et al. (U.S. Patent No.

6,282,549) in view of Stickler (U.S. Patent Application Publication No. 2003/0088573).

As to claim 1, Hoffert et al. teaches identifying the a media element, the media

element having a plurality of pixels (See column 7, lines 6-19, where "pixels" is read on

"content attributes");

determining a first pixel value for one or more of the plurality of the pixels

within the media element (See column 8, lines 7-15, lines 35-41; paragraph 9, lines 6-

16; column 10, lines 33-44; column 11, lines 30-34; column 12, lines 48-55, lines 51-54;

column 21, lines 8-26);

identifying a subset of the plurality of pixels each having a pixel value

substantially similar to the first pixel value (See column 8, lines 7-15; paragraph 9, lines

6-16; column 10, lines 33-44);

Hoffert et al. does not teach a method of generating a data string representing

the contents of a media element, the method comprising: determining a set of

relationships among the subset of the plurality of pixels; and generating a data string for the media element in response to the determined relationships.

Stickler teaches a method and apparatus for information delivery with archive containing metadata in predetermined language and semantics (See abstract), in which he teaches a method of generating a data string representing the contents of a media element (See paragraph 0658), the method comprising: determining a set of relationships among the subset of the plurality of pixels (See paragraph 0055; paragraph 0713); and generating a data string for the media element in response to the determined relationships (See paragraph 0658).

Therefore, it would have been obvious to a person having ordinary skill in the art at the time of the invention was made to have modified Hoffert et al., to include a method of generating a data string representing the contents of a media element, the method comprising: determining a set of relationships among the subset of the plurality of pixels; and generating a data string for the media element in response to the determined relationships.

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to have modified Hoffert et al., by the teachings of Stickler because a method of generating a data string representing the contents of a media element, the method comprising: determining a set of relationships among the subset of the plurality of pixels; and generating a data string for the media element in response to the determined relationships would provide a better way to mange and distribute data, particularly of high value media content (See Stickler, paragraph 0007).

As to claims 2 and 21, <u>Hoffert et al.</u>, as modified, teaches wherein the media element is one of a video clip, static photograph, JPEG image, animation and text (See <u>Hoffert et al.</u>, column 21, lines 54-58; also see <u>Stickler</u>, paragraph 0032; paragraph 0060; paragraphs 1099-1104).

As to claims 3 and 22, <u>Hoffert et al.</u>, as modified, teaches wherein identifying the media element comprises selecting the media element and loading the media element into a memory of a computer system (See <u>Stickler</u>, paragraph 0293); wherein the instruction sequences to cause the processor to identify the media element include instruction sequences to select the media element and to load the media element into the memory (See <u>Stickler</u>, paragraph 0293).

As to claims 4 and 23, <u>Hoffert et al.</u> as modified, teaches wherein loading the media element into the memory comprises downloading the media element over a network connection (See <u>Hoffert et al.</u>, column 6, lines 34-38; column 7, lines 20-22); wherein the media element is loaded into the memory by downloading the media element over a network connection (See <u>Hoffert et al.</u>, column 6, lines 34-38; column 7, lines 20-22).

As to claims 5 and 24, <u>Hoffert et al.</u> as modified, teaches further comprising determining if the media element can be compressed and, if so, compressing the media

element (See Hoffert et al., column 9, lines 56-57; column 16, lines 63-67); wherein the memory further includes instruction sequences to cause the processor to determine if the media element can be compressed and, if so, to compress the media element (See Hoffert et al., column 9, lines 56-57; column 16, lines 63-67).

As to claims 8 and 27, Hoffert et al. as modified, teaches wherein the set of relationships is based on relative distances among the subset of the plurality of pixels (See column 5, lines 13-34).

As to claims 12 and 31, Hoffert et al. as modified, teaches further comprising adjusting the tolerance such that the subset of the plurality of pixels includes a minimum number of pixels (See Hoffert et al., column 8, lines 35-41; column 12, lines 51-54; column 21, lines 8-26).

As to claims 13 and 32, Hoffert et al. as modified, teaches further comprising assigning a label to the media element (See Hoffert et al., column 5, lines 11-21, where "label" is read on "tag"; column 8, lines 35-48).

As to claims 14 and 33, Hoffert et al. as modified, teaches wherein the label is used as a reference pointer to the data string (See Hoffert et al., column 5, lines 11-21, where "label" is read on "tag"; column 8, lines 35-48).

As to claims 15 and 34, Hoffert et al. as modified, teaches wherein indexing the media element comprises comparing the data string for the media element to the data strings associated with the reference media elements (See Hoffert et al., column 5, lines 11-21; column 8, lines 35-48; column 21 lines 34-37).

As to calim16, Hoffert et al. as modified, teaches further comprising displaying a result of the indexing to a user (See Hoffert et al., column 29, lines 28-36).

As to claims 17 and 35, Hoffert et al. as modified, teaches wherein the subset of the plurality of the pixels is selected from a predetermined area of the media element (See Hoffert et al., column 19, lines 56-63; column 21, lines 1-10).

As to claims 19 and 37, Hoffert et al. as modified, teaches further comprising retrieving the media element using the assigned label (See Hoffert et al., column 5, lines 11-21, where "label" is read on "tag"; column 8, lines 35-48).

As to claim 20, Hoffert et al. teaches determine a first pixel value for one or more of the plurality for the pixels within a media element (See column 8, lines 7-15; paragraph 9, lines 6-16);

identifying a subset of the plurality of pixels, each having pixel values substantially similar to the first pixel value (See column 7, lines 6-19, where "pixels" is read on "content attributes"; column 8, lines 7-15, lines 35-41; paragraph 9, lines 6-16;

column 10, lines 33-44; column 11, lines 30-34; column 12, lines 48-55, lines 51-54;

column 21, lines 8-26);

Hoffert et al. does not teach a system for generating a data string representing the

contents of a media element, the system comprising: determine a set of relationships

among the subset of the plurality of pixels; and generate a data string for the media

element, in response to the determined relationship.

Stickler teaches a method and apparatus for information delivery with archive

containing metadata in predetermined language and semantics (See abstract), in

which he teaches a system for generating a data string representing the contents of a

media element (See paragraph 0658), the method comprising: determine a set of

relationships among the subset of the plurality of pixels (See paragraph 0055;

paragraph 0713); and generate a data string for the media element, in response to the

determined relationship (See paragraph 0658).

Therefore, it would have been obvious to a person having ordinary skill in the art

at the time of the invention was made to have modified Hoffert et al., to include a

system for generating a data string representing the contents of a media element, the

system comprising: determine a set of relationships among the subset of the plurality of

pixels; and generate a data string for the media element, in response to the determined

relationship.

It would have been obvious to a person having ordinary skill in the art at the time

the invention was made to have modified Hoffert et al., by the teachings of Stickler

because a system for generating a data string representing the contents of a media

element, the system comprising: determine a set of relationships among the subset of the plurality of pixels; and generate a data string for the media element, in response to the determined relationship would provide a better way to mange and distribute data, particularly of high value media content (See Stickler, paragraph 0007).

As to claims 38 and 47, Hoffert et al. teaches further comprising determining a plurality of pixel values for the subset of the plurality of pixels (see Hoffert et al., column 7, lines 6-19, where "pixels" is read on "content attributes"; column 8, lines 35-41; column 12, lines 51-54; column 21, lines 8-26).

As to claims 39 and 48, Hoffert et al. teaches further comprising providing a tolerance level for the first pixel value (see Hoffert et al., column 8, lines 35-41; column 12, lines 51-54; column 21, lines 8-26).

As to claims 40 and 49, Hoffert et al. teaches wherein each pixel in the subset of the plurality of pixels has a pixel value within the tolerance level of the first pixel value. (See Hoffert et al., column 8, lines 35-41; column 12, lines 51-54; column 21, lines 8-26).

As to claims 41 and 50, Hoffert et al. teaches further comprising providing one or more reference media elements, each reference media element having an associated data string (See Stickler, paragraph 0055; paragraph 0658; paragraph 0713).

As to claims 42 and 51, <u>Hoffert et al.</u> teaches further comprising indexing the media element in response to the generated data string and one or more of the data strings associated with the one or more reference media elements (See <u>Stickler,</u> paragraph 0055; paragraph 0658; paragraph 0713).

As to claims 44 and 53, <u>Hoffert et al.</u> teaches wherein the pixels are pixels, and the first pixel value comprises a color value, a brightness value, a texture value, a fog value, or a chrominance value (See <u>Hoffert et al.,</u> column 7, lines 6-19).

As to claims 46 and 55, <u>Hoffert et al.</u> teaches further comprising displaying the retrieved media element (See <u>Hoffert et al.,</u> column 2, lines 22-27).

6.   Claims 11 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over <u>Hoffert et al.</u> (U.S. Patent No. 6,282,549) in view of <u>Stickler</u> (U.S. Patent Application Publication No. 2003/0088573), as applied to claims 1-5, 8, 12-17, 19-24, 27, 31-35 and 37-55 above, and further in view of <u>Delp,</u> (U.S. Patent No. 6,026,411).

As to claims 11 and 30, <u>Hoffert et al.</u> as modified, still does not teach further comprising generating a histogram band for each of the plurality of pixel values for the one or more pixels within media element that the at least common pixel value represents; where the characterization process is further to, generate a histogram band for each of the at least one common pixel value of the media element, where the

histogram bands are based on a percentage of a predetermined area of the media

element that the at least common pixel value represents.

Delp teaches a method, apparatus, and computer program product for

generating an image index and for internet searching and querying by image colors

(See abstract), in which he teaches further comprising generating a histogram band for

each of the at least one common pixel value of the media element, where the histogram

bands are based on a percentage of a predetermined area of the media element that

the at least common pixel value represents (See column 5, lines 30-41, lines 51-62;

column 8, lines 64-67; column 9, lines 1-3); where the characterization process is

further to, generate a histogram band for each of the at least one common pixel value of

the media element, where the histogram bands are based on a percentage of a

predetermined area of the media element that the at least common pixel value

represents (See column 5, lines 30-41, lines 51-62; column 8, lines 64-67; column 9,

lines 1-3).

Therefore, it would have been obvious to a person having ordinary skill in the art

at the time of the invention was made to have modified Hoffert et al. as modified, to

include further comprising generating a histogram band for each of the at least one

common pixel value of the media element, where the histogram bands are based on a

percentage of a predetermined area of the media element that the at least common

pixel value represents; where the characterization process is further to, generate a

histogram band for each of the at least one common pixel value of the media element,

where the histogram bands are based on a percentage of a predetermined area of the media element that the at least common pixel value represents.

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to have modified Hoffert et al. as modified, by the teachings of Delp because further comprising generating a histogram band for each of the at least one common pixel value of the media element, where the histogram bands are based on a percentage of a predetermined area of the media element that the at least common pixel value represents; where the characterization process is further to, generate a histogram band for each of the at least one common pixel value of the media element, where the histogram bands are based on a percentage of a predetermined area of the media element that the at least common pixel value represents would provide an intelligent method, apparatus and computer program product for building an image index and for querying by image colors images from the internet (See Delp, column 1, lines 44-47).

Response to Arguments

7.   Applicant's arguments filed on 01-September-2005, with respect to the rejected claims 1-30 have been fully considered but they are not found to be persuasive:

In response to applicants' arguments regarding claims 1 and 20, that Hoffert et al. does not teach or suggest *"determining a pixel value, selecting a subset of pixels that have substantially similar value to a particular value, and using the relationships among the subset of pixels to create a data string for use in indexing a media element"*, the

arguments have been fully considered but are not found to be persuasive, because

Hoffert et al. discloses streaming technology which is indexed (See column 7, lines 6-

19) and determining the average frame difference for a pixel (See column 10 , lines 33-

44). Stickler discloses determining a relationship between objects and generating a

"data string" (See paragraph 0055; paragraph 0658; paragraph 0713). Claims 1 and 20

do not disclose "create a data string for use in indexing a media element", they only

disclose generating a data string. Although the claims are interpreted in light of the

specification, limitations from the specification are not read into the claims. See *In re*

Van Geuns, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In response to applicants' arguments regarding claims 1 and 20, that Stickler

"does not teach selecting a subset of individual pixels within a media element on which

to base an index", the arguments have been fully considered but are not found to be

persuasive, because Stickler discloses determining a relationship between objects and

generating a "data string" (See paragraph 0055; paragraph 0658; paragraph 0713).

Claims 1 and 20 do not disclose "*media element on which to base an index*", they only

disclose generating a data string.

In response to applicants' arguments regarding claims 11 and 30, that Delp

"does not teach or suggest determining a pixel value, selecting a subset of pixels that

have substantially similar value to a particular value, and using the relationships among

the subset of pixels to create a data string for use in indexing a media element", the

arguments have been fully considered but are not found to be persuasive, because

Delp discloses a histogram of pixels (See column 5, lines 30-41, lines 51-62; column 8,

lines 64-67; column 9, lines 1-3). <u>Hoffert et al.</u> discloses streaming technology that is

indexed (See column 7, lines 6-19) and determining the average frame difference for a

pixel (See column 10 , lines 33-44). <u>Stickler</u> discloses determining a relationship

between objects and generating a "data string" (See paragraph 0055; paragraph 0658;

paragraph 0713). Claims 11 and 30 disclose "generating a histogram band".

Conclusion

8.   Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Mellissa M. Chojnacki whose telephone number is (571)

272-4076. The examiner can normally be reached on 9:00am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Charles Rones can be reached on (571) 272-4085. The fax phone number

for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).

November 11, 2005

Mmc

SAM RIMELL
PRIMARY EXAMINER